FILED
AUG 20 2004
OFFICE OF THE CLERK

No. 03-1674

IN THE

Supreme Court of the United States

NANCY FENDELL LURIE,

Petitioner,

v.

ROBERT J. BLACKWELL,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF IN OPPOSITION

JAMES B. DAY
BLACKWELL & ASSOCIATES, P.C.
2678 Babble Creek
P.O. Box 310
O'Fallon, MO 63366-0310
(636) 240-3632

Counsel for Respondent

189318

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

I. Whether Petitioner has been deprived of: (i) her privileges and immunities rights guaranteed by Article IV, Section 2 of the United States Constitution; (ii) her property without due process of law guaranteed by the Fifth Amendment to the United States Constitution; and (iii) her equal protection rights guaranteed by the Fourteenth Amendment to the United States Constitution, when her ownership interest in personal property is redefined and altered solely as a result of her change of domicile and removal of that property from the state of her original domicile.

STATEMENT OF CASE

The Court of Appeals for the Eighth Circuit and the United States Bankruptcy Appellate Panel for the Eighth Circuit accurately stated the pertinent, undisputed facts related to Petitioner Nancy Lurie's claim. [Pet'r App. 1-23]. In addition, the main facts in this case were discussed in the briefs filed before the Supreme Court of the United States in the case, *Ronald U. Lurie v. Robert J. Blackwell, Liquidating Trustee of the Popkin & Stern Liquidating Trust*, docket number 03-1314.

Briefly, Ronald U. Lurie (hereinafter "Lurie") defaulted on his obligations with the Liquidating Trust for the Popkin & Stern Chapter 11 Bankruptcy Estate. Respondent Robert J. Blackwell, Liquidating Trustee of the Popkin & Stern Liquidating Trust (hereinafter "Liquidating Trustee") filed an adversary complaint against Lurie due to said default. On October 20, 1994, the United States Bankruptcy Court for the Eastern District of Missouri entered a Judgment against Lurie in the amount of $1,121,743.00 (hereinafter "1994 Judgment"). Said 1994 Judgment was the subject matter of Writ of Certiorari filed with this Court in docket number 03-1314. The Liquidating Trustee filed said 1994 Judgment as a domesticated foreign judgment in the State of Arizona.

In 1995, the Bankruptcy Court entered an Order freezing the Lurie's assets including the oil painting titled *Apache Renegades*. In 1999, Liquidating Trustee obtained an Order from the Bankruptcy Court to lift said Freeze Order and then filed a Writ of Execution in the State of Arizona to execute on said painting. On January 13, 2000, the Sheriff of Maricopa County, Arizona, conducted an execution sale of the painting. After deducting fees and expenses, the Liquidating Trustee received $203,059.00 from the sale of

the painting. Prior to the sale, the parties agreed that Robert Lurie, Lurie's brother, would receive 12.6% of the proceeds for Robert's interest in the painting. The Bankruptcy Court determined that Petitioner had a half interest in the remaining proceeds realized from the execution sale of said painting. This finding was affirmed by the United States Bankruptcy Appellate Panel and the Court of Appeals for the Eighth Circuit. Liquidating Trustee complied with said provision and tendered to Petitioner her half interest in the resulting proceeds realized from the execution sale.

There has been extensive litigation between the Lurie family and the Liquidating Trustee in this case. The following is a list of the appellate decisions organized by State. MISSOURI: *In re Popkin & Stern*, 105 F.3d 1248 (8th Cir. 1997); *In re Popkin & Stern*, 141 F.3d 1169 (8th Cir. BAP 1998) (unpublished); *In re Popkin & Stern*, 168 F.3d 494 (8th Cir. 1998) (unpublished); *In re Popkin & Stern*, 226 B.R. 882 (8th Cir. BAP 1998); *In re Popkin & Stern*, 234 B.R. 724 (8th Cir. BAP 1999); *In re Popkin & Stern*, 238 B.R. 146 (8th Cir. BAP 1999); *In re Popkin & Stern*, 196 F.3d 933 (8th Cir. 1999); *In re Popkin & Stern*, 233 F.3d 764 (8th Cir. 2000); *In re Popkin & Stern*, 242 F.3d 376 (8th Cir. 2000) (unpublished); *In re Popkin & Stern*, 259 B.R. 701 (8th Cir. BAP 2001); *In re Popkin & Stern*, 263 B.R. 885 (8th Cir. BAP 2001); *In re Popkin & Stern*, 266 B.R. 146 (8th Cir. BAP 2001); *In re Popkin & Stern*, 289 F.3d 554 (8th Cir. 2002); *In re Popkin & Stern*, 47 Fed. Appx. 785 (8th Cir. 2002) (unpublished); *In re Popkin & Stern*, 292 B.R. 910 (8th Cir. BAP 2003); *In re Popkin & Stern*, 85 Fed. Appx. 543 (8th Cir. 2004) (unpublished). WYOMING: *Lurie v. Blackwell*, 51 P.3d 846 (Wyo. 2002). NEW MEXICO: *Blackwell v. Lurie*, 71 P.3d 509 (N.M. Ct. App. 2003). MONTANA: *Blackwell v. Lurie*, 943 P.2d 1318 (Mont. 1997); *Lurie v. Blackwell*, 948 P.2d 1161 (Mont. 1997); *Lurie v. Sheriff of Gallatin County*, 949 P.2d 1163 (Mont. 1997); *Lurie v. Sheriff of*

Gallatin County, 999 P.2d 342 (Mont. 2000); *Lurie v. Blackwell*, 211 F.3d 1274 (9th Cir. 2000) (unpublished); *Blackwell v. Lurie*, 43 P.3d 985 (Mont. 2002) (unpublished). This is the second Writ of Certiorari the Lurie family has filed with the Supreme Court of the United States.

REASONS FOR DENYING THE PETITION

I. Petitioner's Constitutional Rights Were Not Violated

Petitioner states that the lower courts improperly ruled concerning whether the portion of the painting owned by Petitioner and her husband was held as tenants by the entireties. The well reasoned opinion of the United States Bankruptcy Appellate Panel for the Eighth Circuit found the painting was not held as tenants by the entireties as the four elements necessary in creating a tenancy by the entirety were not present in this case. [Pet'r App. 16-18].

Alternatively, if at one time the painting, or a portion of the painting, may have been held as tenants by the entireties, the Petitioner contends the lower courts improperly ruled that the portion of said painting owned in this manner lost that characteristic when the Luries moved to the State of Montana. However, the Montana Supreme Court decided this issue with regard to other personal property owned by the Luries and seized by the Sheriff of Gallatin County, Montana. The Montana Supreme Court held that "personal property owned by [Petitioner] and her husband Ronald as tenancy by the entirety in Missouri may not be held in that manner in Montana. The property is now owned either as joint tenancy property or as tenancy in common property." *Lurie v. Sheriff of Gallatin County*, 299 Mont. 283, 999 P.2d 342, 346 (Mont. 2000). This is a final, non-appealable judgment.

The Bankruptcy Court determined Lurie's testimony at a September 16, 1994 deposition that the painting had hung in Lurie's home in the State of Montana to be credible and the Bankruptcy Appellate Panel found no error in the Bankruptcy Court's reliance on this evidence. [Pet'r App. 20] The Luries then moved the painting from their Montana residence to an art gallery in the State of Arizona to be sold by consignment. By moving from the State of Missouri to the State of Montana, any personal property owned by the Luries as tenancy by the entireties lost that form of ownership. Petitioner is now seeking to collaterally attack the decision entered by the Montana Supreme Court in this appeal. This attack should be denied for the reasons herein and those stated in the decisions of the lower courts.

CONCLUSION

The lower courts appropriately ruled on the matter raised by Petitioner in this appeal. Petitioner's Petition for Writ of Certiorari should be denied.

Respectfully submitted,

JAMES B. DAY
BLACKWELL & ASSOCIATES, P.C.
2678 Babble Creek
P.O. Box 310
O'Fallon, MO 63366-0310
(636) 240-3632

Counsel for Respondent